

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2144 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

MALIBEN NATHUBHAI  
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Appearance:

Mr N.D.Gohil, Asstt.GOVERNMENT PLEADER for Petitioner  
MR KK TRIVEDI for Respondent No. 1  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/07/2000

ORAL JUDGEMENT

1. State of Gujarat has preferred this petition  
under Article 227 of the Constitution of India to  
challenge an order passed by the Urban Land Tribunal at

Ahmedabad in Appeal No. Surat/ 102/ 91 under Section 33 of the Urban Land Ceiling (Regulation) Act, 1976 ('the Act' for short) .

2. Brief facts leading to the present petition can be stated thus:

2.1 The respondents are the legal representatives of Balubhai Bhikhabhai who filed form No I under section 6 (1) of the Act in respect of the following properties:

Sr.No.	Description of property	Area of property	Total	Built up area	Open land	Use of property
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1.	Surat Rander 1/25	56.2.7	56.2.7	-		Residence
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2.	" 1/189/B	47.75.23	47.75.23	-		"
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3.	" 1/190	156.35.61	156.35.61	-		"
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4.	" 1/192	142.97.82	142.97.82	-		"
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5.	" Jahagirabad S. No. 122	24888	-			Agri.land
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6.	" S No. 123/2	607	-	607		Open land
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7.	" 74	4350	-	4350		"
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2.2 In respect of the said property, the competent authority -Deputy Collector, Surat passed an order on 16.12.1983 (Annexure A). Aggrieved by the said order, deceased Balubhai approached the Secretary, ULC, Revenue Department, Ahmedabad in Appeal No.. 1478/84. The said appeal came to be dismissed vide an order dated 19.1.1988 (Annexure B). The said order was,therefore, challenged under section 33 of the Act before the Urban Land Tribunal.The Tribunal by its order dated 31.3.1992 allowed the appeal and held that the property in question is retainable property. There is no excess vacant land held by deceased Balubhai Bhikhabhai and form No., I filled in by him under section 6(1) was thus finalised. Aggrieved by the said order, present petition is filed by the State of Gujarat.

3. The petition is based mainly on the ground that

the Tribunal ought not to have condoned the delay while entertaining the appeal. It is contended that the Tribunal has committed an error on merits of the case also. It is contended that the land in question has been vested in the State Government, possession thereof is taken and land has been allotted to weaker section of the society. Therefore, there is no justification, legal or equitable, for entertaining the appeal. It is contended that the form was filed in by Balubhai Bhikhabhai and he had not mentioned names of the petitioners to indicate their interest in the property in question. The Tribunal has, therefore, committed an error. Petition may be allowed and the impugned order may be quashed and set aside.

4. Mr Gohil, learned AGP has reiterated the grounds stated in the memo of petition. He submitted that in all cases, it is not possible and prudent to set the clock back. The land in question had already been allotted and, therefore, petition may be allowed.

5. Mr. Trivedi, learned advocate appearing for the respondents has opposed this petition. He submitted that the scope of this petition is very limited. The petitioner has raised the contentions which have not been raised before the Tribunal. They may not be entertained by this Court. Mr. Trivedi submitted that even if they are considered, they cannot be said to contain any merits. Mr. Trivedi submitted that non-mentioning of names or error in mentioning of names in the form cannot take away right of righteous persons. He relied on the decision of this Court in Ratilal Icchharam Sorathia vs. Urban Land Ceiling Tribunal, 1997(1) GLR 439, wherein this Court held that while ascertaining excess holding, if daughter's share is not taken into consideration, the order is bad and it is immaterial whether daughter submitted prescribed form or not. Mr. Trivedi further submitted that delay in deserving cases has to be condoned. In the instant case, if the order of the Tribunal is seen, the Tribunal has given legal and just justification for condoning delay. Mr. Trivedi, therefore, submitted that petition may be dismissed.

6. Having regard to the rival side contentions, at the outset, it may be noted that in the light of the decision of the Apex Court in the case of Mohmed Yunus vs. Mohmed Mustaqim, AIR 1984 SC 38, jurisdiction of this court in a petition under Article 227 of the Constitution is extremely limited. This jurisdiction cannot take place of appellate or revisional jurisdiction. Under the circumstances, while considering

such petition, court has to be conscious about its scope.

7. Mr. Gohil was at loss to point out that the contentions raised in this petition regarding proceedings having been taken under section 10 of the Act and the land having been allotted to others, were raised before the Tribunal and altogether a new point is attempted to be canvassed before this Court in this petition which the State Government cannot be permitted to do.

8. So far as delay is concerned, it is evident and not disputed that the competent authority did not serve any notice to all the heirs of deceased Harkhiben, widow of Bhikhabhai Bhulabhai who had expired subsequently on 13.2.1957. The land in question belonged to Bhikhabhai who expired on 17.1.1947 on whose demise, the land was mutated in the name of Harkhiben and on her death, the land was mutated to the name of Narsinhbhai, Balubhai, Gangaben and Maliben who had become the owners. If these persons were not served with notice, naturally, they would not be aware about the proceedings and, therefore, the Tribunal was perfectly right in condoning delay.

9. It has to be appreciated that the Tribunal has considered the case on merits. Mr. Gohil could not point out where the Tribunal has committed any error which would call for interference of this court. The Tribunal observed that as per PEDHI NAMA (pedigree / family tree), they were major on the date of enactment and as such, four units were required to be granted to the respondents. The Tribunal also considered that out of said property, the competent authority had held that survey Nos. 122 and 123/2 of Jahagirabad, Taluka Choryasi, district- Surat fell into agriculture zone and they were, therefore, excluded by the competent authority. Therefore, for computing respective shares of the property, the Tribunal held that there was no excess land. In the view of this court also, there does not appear to be any error committed by the Tribunal worth interfering in exercise of powers under Article 227 of the Constitution of India, scope of which is very limited.

10. It may be noted that this Court was not required to dwell into factual merits of the case. But this is done with a view to satisfy conscience of the Court.

11. Petition, therefore, must fail and is, therefore, dismissed. Rule is discharged. Interim relief granted earlier would stand vacated. No costs.

(A. L. Dave, J.)

parekh